

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

_____)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	
LEE BRASS COMPANY, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), for violations of Sections 3002, 3004 and 3005 of RCRA, 42 U.S.C. §§ 6922, 6924 and 6925, and the implementing regulations.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. The United States District Court for the Northern District of Alabama has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 28 U.S.C. § 1391(b), venue is proper in this Court because the violations occurred in this judicial district.

4. Authority to bring this civil action is vested in the Attorney General of the United States pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been provided to the State of Alabama in accordance with 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Lee Brass Company, Inc., is a corporation organized and incorporated under the laws of the State of Delaware. Lee Brass is registered and doing business in the State of Alabama. Lee Brass is a subsidiary of Elkhart Products Corporation, which is wholly-owned by Amcast Industrial Corporation.

7. As a corporation, Lee Brass is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Alabama Code § 22-30-3(9).

8. Lee Brass is responsible for the overall operation of the brass foundry manufacturing business located at 1800 Golden Springs Road, Anniston, Calhoun County, Alabama ("Brass Foundry"), and is therefore an "operator" as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

9. Lee Brass owns the Brass Foundry and the underlying real property located at 1800 Golden Springs Road, Anniston, Calhoun County, Alabama, and is therefore an "owner" as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

STATUTORY AND REGULATORY BACKGROUND

10. RCRA was enacted in 1976 to establish a regulatory program for the management of hazardous wastes to be administered by EPA. RCRA established a comprehensive regulatory program for generators and transporters of hazardous waste and for owners and operators of facilities that treat, store or dispose of hazardous wastes.

11. Section 3002 of RCRA, 42 U.S.C. § 6922, requires that EPA promulgate regulations establishing standards applicable to generators of hazardous waste. EPA regulations specifying standards for generators of hazardous waste are codified at 40 C.F.R. Part 262.

12. Section 3004 of RCRA, 42 U.S.C. § 6924, requires that EPA promulgate regulations establishing performance standards applicable to owners and operators of facilities for the

treatment, storage or disposal of hazardous waste. Section 3004 of RCRA, 42 U.S.C. § 6924, also required EPA to, whenever appropriate, distinguish between requirements appropriate for new facilities and for facilities in existence on the date of the promulgation of such regulations.

13. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that States may be authorized to administer and enforce State hazardous waste management programs under RCRA rather than the federal program. The State of Alabama was authorized to administer its RCRA hazardous waste management program on or about December 22, 1987. The requirements of Alabama's authorized State program are found at Alabama Code §§ 22-30-1 through 22-30-24. The Alabama "Hazardous Waste Management Regulations" as authorized by EPA are set forth at Alabama Department of Environmental Management ("ADEM") Admin. Code R. 335-14-1 through 335-14-9.

14. The State of Alabama has not been authorized by EPA to administer and enforce certain portions of the RCRA hazardous waste management program added by the Hazardous and Solid Waste Amendments of 1984, including the requirements of 40 C.F.R. 268.40, which became effective on August 24, 1998, and sets forth land disposal restriction standards for certain specified hazardous wastes including D008 type-wastes.

15. The United States has concurrent authority under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), to enforce those portions of the RCRA hazardous waste management program that the State of Alabama has been authorized to enforce.

16. The United States has exclusive authority pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), to enforce those portions of the RCRA program added by the Hazardous and Solid Waste Amendments of 1984 until the State program is authorized with respect to those requirements.

17. 40 C.F.R. Part 262 and ADEM Admin. Code R. 335-14-3 contain the regulations that establish standards for generators of hazardous waste. A person who generates a hazardous waste as defined by 40 C.F.R. Part 261 and ADEM Admin. Code R. 335-14-2 is subject to the

compliance requirements and penalties prescribed in Section 3008 of RCRA if that person fails to comply with any of the requirements of these parts.

18. Under 40 C.F.R. § 262.11 and ADEM Admin. Code R. 335-14-3-.01(2), a person who generates a solid waste, as defined in 40 C.F.R. § 261.2 and ADEM Admin. Code R. 335-14-2-.01(2), must determine if that waste is a hazardous waste using a method prescribed in the regulation. If the waste is determined to be hazardous, the generator must refer to 40 C.F.R. Parts 264, 265 and 268 and ADEM Admin. Code R. 335-14-5, 335-14-6 and 335-14-9 for possible exclusions or restrictions pertaining to management of his specific waste. 40 C.F.R. § 262.11(d); ADEM Admin. Code R. 335-14-3-.02(2)(d).

19. 40 C.F.R. Part 264 and ADEM Admin. Code R. 335-14-5 contain the regulations which establish minimum standards for the acceptable management of hazardous waste. These minimum standards apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste. A person who treats, stores, or disposes of hazardous waste as defined by 40 C.F.R. Part 261 and ADEM Admin. Code R. 335-14-2 also is subject to the compliance requirements and penalties prescribed in Section 3008 of RCRA, 42 U.S.C. § 6928, if that person fails to comply with any the requirements of the referenced regulations.

20. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, EPA promulgated regulations requiring each owner or operator of a facility for the treatment, storage, or disposal of hazardous waste to have an operating permit. These regulations are codified at 40 C.F.R. Parts 264, 265 and 270.

21. Pursuant to Alabama Code § 22-30-12, Alabama promulgated regulations requiring each owner or operator of a facility for the treatment, storage, or disposal of hazardous waste to have an operating permit. These regulations are codified at ADEM Admin. Code R. 335-14-5, 335-14-6 and 335-14-8.

22. Section 3004 of RCRA, 42 U.S.C. § 6924, as amended by the Hazardous and Solid Waste Amendments of 1984, restricts or prohibits the land disposal of certain hazardous wastes.

23. Pursuant to Section 3004(m) of RCRA, 42 U.S.C. § 6924(m) as amended by the Hazardous and Solid Waste Amendments of 1984, EPA promulgated regulations that restrict the land disposal of certain listed hazardous wastes. The land disposal restrictions require a generator to determine if its own waste is restricted from land disposal. 40 C.F.R. § 268.7(a) and ADEM Admin. Code R. 335-14-9-.01(7).

24. The hazardous wastes to which these restrictions and prohibitions apply include hazardous wastes that exceed the treatment standard for that waste as identified in the table "Treatment Standards for Hazardous Wastes" at 40 C.F.R. § 268.40(e). See also ADEM Admin. Code R. 335-14-9-.00 and .04.

25. The land disposal treatment standard for wastes that exhibit the characteristic for toxicity for lead is 0.75 mg/l applying the toxicity characteristic leaching procedure ("TCLP"). See 40 C.F.R. § 268.40(e) and ADEM Admin. Code R. 335-14-9-.00 and .04.

26. Section 3005 of RCRA, 42 U.S.C. § 6925 and Alabama Code § 22-30-12, require every owner or operator of a treatment, storage or disposal ("TSD") facility to obtain a permit to operate the facility. Because Congress realized that it would be impossible to issue permits to all hazardous waste facilities before the permit program became effective it created a mechanism whereby TSD facilities could operate under "interim status."

27. Under Section 3005 of RCRA and Alabama Code § 22-30-12, a facility had to meet the following criteria to achieve interim status: (1) be in existence on November 19, 1980, or the effective date of the statutory or regulatory changes that rendered the facility subject to the permit requirement; (2) be in compliance with the preliminary notification requirements of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a); and (3) file an accurate and complete Part A application. Facilities that failed to submit Part A applications and/or failed to provide notice pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, never received interim status. Hazardous waste facilities with interim status in the State of Alabama must comply with the regulations governing

treatment, storage or disposal of hazardous wastes found at ADEM Admin Code R. 335-14-6.

See 40 C.F.R. Part 265.

28. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes EPA to seek a civil penalty not to exceed \$25,000 per day for each violation.

29. Pursuant to 40 C.F.R. Part 19, EPA authorized an upward adjustment of ten percent to \$27,500 of the civil penalty to be assessed for each violation of Subtitle C of RCRA and the regulations promulgated thereunder occurring after January 30, 1997.

GENERAL ALLEGATIONS

Lee Brass' Generation of Used Foundry Sand

30. At its Brass Foundry, Lee Brass produces brass parts for the plumbing industry. Brass contains the metals lead and cadmium.

31. At its Brass Foundry, Lee Brass uses a “green sand” molding process to cast molten brass in a building identified as Foundry #2. Green sand is a mixture of new molding sand, wood flour, bentonite clay, and used molding sand.

32. During the green sand molding process, molten brass is poured into sand casts made of green sand and allowed to cool. After cooling, the cast is broken open and separated from the casted brass fixture in what is referred to as the “shakeout process.” As a result of the cooling process, the sand used to form the casting mold hardens into lumps of clay-coated sand and contains large chunks of brass, brass fines, and various metals, including lead.

33. After shakeout, used contaminated sand may be transported by conveyor for processing in a piece of equipment called a “muller.” The muller includes a vibratory drum with perforations and a series of conveyors and screens that reclaim the sand. Larger chunks of materials that can not be broken down by the muller are removed. After the used foundry sand is

reclaimed by the muller it is mixed with new sand, wood flour and bentonite clay to form green sand.

34. None of the used foundry sand transported by conveyor to the muller is reused in the green sand mold making process without first being processed in the muller.

35. None of the used foundry sand transported by conveyor to the muller can be reused in the green sand mold making process without first being processed in the muller.

36. During, and as a result of, the shakeout process, and as used foundry sand is transported by conveyor to the muller, used foundry sand is spilled on the floor of Foundry #2. Spilled used foundry sand is either swept into piles in the immediate proximity of the mold making line or placed in a large used foundry sand pile in a large indoor storage room in Foundry #2. Some of the used foundry sand placed in these piles may be removed by Lee Brass, returned to the muller for screening, and used again in the mold making process.

37. Neither the used foundry sand placed in the piles at the end of the molding line nor the sand in the Foundry #2 storage room pile can be reused in Lee Brass' green sand mold making process without first being processed in the muller to remove the materials present in the sand as a result of shakeout.

38. The used foundry sand from Lee Brass' green sand molding process that is placed in piles at the end of the molding line or in the Foundry #2 storage room pile is a "solid waste" as that term is defined in 40 C.F.R. § 261.2(a)(1) and ADEM Admin. Code R. 335-14-2-.01(2).

39. Used foundry sand that is placed in piles at the end of the molding line and in the Foundry #2 storage room pile exhibit the characteristic of toxicity for lead as set forth in 40 C.F.R. § 261.24 and ADEM Admin. Code R. 335-14-2-.03(5). The used foundry sand that is placed in piles at the end of the molding line or in the Foundry #2 storage room pile is D008 characteristic hazardous waste.

40. Upon information and belief, until approximately April 2000, used foundry sand in the Foundry #2 storage piles that was not returned to the muller was transported by dump truck to a

storage silo located at Lee Brass' sand reclamation unit ("SRU") for processing in the SRU.

41. Upon information and belief, until approximately April 2000, the used foundry sand that was transported by dump truck by Lee Brass from Foundry #2 to the SRU storage silo was a "solid waste" as that term is defined in 40 C.F.R. § 261.2(a)(1) and ADEM Admin. Code R. 335-14-2-.01(2).

42. On June 15, 1999, EPA collected one sample of used foundry sand from a dump truck that was transporting used foundry sand from Foundry #2 in a dump truck prior to its addition to the SRU storage silo, and collected two samples directly from the SRU storage silo.

43. TCLP analysis of the used foundry sand sampled from the dump truck show lead levels at 28 parts per million ("ppm"), and TCLP analyses of used foundry sand collected from the SRU storage silo show lead levels of 8.3 ppm and 11 ppm.

44. 40 C.F.R. § 261.24(b) and ADEM Admin. Code R. 335-14-2-.03(5) provides that solid waste with a TCLP lead level greater than 5.0 ppm is a hazardous waste.

45. Used foundry sand that was stored in the SRU storage silo exhibited the characteristic of toxicity for lead as set forth in 40 C.F.R. § 261.24 and ADEM Admin. Code R. 335-14-2-.03(5). The used foundry sand in the SRU storage silo was a D008 characteristic hazardous waste.

46. Upon information and belief, until approximately April 2000, used foundry sand was treated at the SRU in a two stage process. During the first phase of treatment, metals were physically removed from the used foundry sand by use of a gravity concentration circuit comprised of screens, a rod mill, a rougher tabling operation, and a cleaner tabling operation. TCLP analysis of two grab samples of used foundry sand after sorting during the metal recovery stage collected by EPA on June 21, 1999, shows lead levels of 40 ppm and 60 ppm. Analysis of the samples collected on June 21, 1999, for total lead concentrations of the used foundry sand after the metal recovery stage show lead levels at 1,800 and 2,800 ppm.

47. 40 C.F.R. § 261.24(b) and ADEM Admin. Code R. 335-14-2-.03(5)(b) provide that solid waste with a TCLP lead level greater than 5.0 ppm is a hazardous waste.

48. Upon information and belief, until approximately April 2000, during the SRU's second treatment stage, used foundry sand was thermally treated in a rotary kiln.

49. The thermal treatment portion of the SRU is a "thermal reclamation unit," and an "industrial furnace" as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02, which is subject to the "boiler or industrial furnace" or "BIF" Rules at 40 C.F.R. Part 266, Subpart H, and ADEM Admin. Code R. 335-14-7-.08.

50. Upon information and belief, until approximately April 2000, the SRU used a baghouse (designated by Lee Brass as "Baghouse #11") to collect sand fines emitted during the thermal treatment phase of the SRU. During that time, baghouse sand fines were returned to the used foundry sand holding tank and reintroduced for further processing in the SRU.

51. Upon information and belief, until approximately April 2000, after exiting the SRU, the thermally treated used foundry sand was stored in an "exit pile" in the vicinity of the SRU.

52. During a June 15, 1999 inspection, EPA sampled the used foundry sand that had been thermally treated in the SRU. The samples were collected from a large sand pile known as the "exit pile," which on the date of the June 15, 1999 inspection was approximately 10 feet high, 20 feet wide, and 50 yards long. TCLP analyses of samples of treated used foundry sand show collected from the exit pile show lead levels at 1.3 ppm, 2 ppm, and 2.2 ppm.

53. EPA's TCLP analyses of the treated used foundry sand sampled on June 21, 1999 show that the lead levels in the treated used foundry sand exceed the applicable land disposal restriction standard for lead of 0.75 ppm as set forth at 40 C.F.R. § 268.40.

54. Total lead analyses of samples of treated used foundry sand collected from the exit pile by EPA on or about June 15, 1999, show total lead concentrations in the treated used foundry sand at 960 ppm, 1000 ppm, and 1,000 ppm.

55. TCLP analyses performed by Lee Brass of samples of treated used foundry sand collected by Lee Brass during the period of August 1998 to at least April 1999 show that lead levels in the treated used foundry sand exceeded the applicable land disposal restriction standards for lead of 0.75 as set forth in 40 C.F.R. § 268.40 in 26 of 47 samples.

56. Some used foundry sand from the “exit pile” is returned to Foundry #2 for reuse in the green sand molding process. Used foundry sand from the exit pile that is not used in Foundry #2 is either donated or sold for use in playgrounds, ball fields, or landscaping activities. Used foundry sand that is not returned to the molding process in Foundry #2 or donated or sold remains in the “exit pile.”

EPA’s and ADEM’s February 4, 1999
Inspection of Lee Brass

57. On February 4, 1999, EPA inspectors, together with representatives of ADEM, conducted a compliance evaluation inspection of the Brass Foundry. During the February 4, 1999 inspection EPA inspectors identified the following conditions at the Brass Foundry:

- a. Storage of metallic coated old refractory brick in a concrete slag bunker, and next to the bunker on an exposed concrete slab, from Lee Brass’s ingot production operation coated which, upon information and belief, is believed to have been TCLP for lead;
- b. An open 55-gallon satellite accumulation drum in the Brass Foundry’s machine shop, which was used to accumulate floor sweepings that are hazardous for lead (DOO8);
- c. A 55-gallon satellite accumulation drum in the Brass Foundry’s machine shop used to accumulate floor sweepings that are hazardous for lead (i.e., DOO8) that did not bear the words “hazardous wastes” or any other marking indicating its contents were hazardous;

- d. That Lee Brass did not maintain at its Brass Foundry records that documented that approximately ten employees who required RCRA training had received either classroom training or on the job training of procedures necessary to ensure compliance with hazardous waste management requirements anytime after February 4, 1998;
- e. That Lee Brass did not maintain records that listed the job title(s) for each position related to hazardous waste management, a job description(s) for such title(s), and a list of the employees filling such position(s);
- f. Hazardous waste manifest no. MI7613454 did not include a land disposal restriction notice;
- g. That the cement floor in the hazardous waste storage area was cracked;
- h. Two 55-gallon drums of hazardous floor sweepings were not marked with the proper hazardous waste codes on their labels; and
- i. One 55-gallon drum used to accumulate used oil in the Brass Foundry's machine shop, and three 55-gallon drums used to store used oil in the Brass Foundry's used oil storage area were open.

FIRST CLAIM FOR RELIEF

Illegal Treatment of Used Spent Foundry

58. Paragraphs 1 through 56 are re-alleged herein and incorporated herein by reference.

59. Lee Brass is the "owner" and "operator" of the Brass Foundry as those terms are defined at 40 C.F.R. § 260.10 and ADEM Admin Code R. 335-14-1-.02.

60. The Brass Foundry, its SRU, and the underlying real property, are each a "facility" as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

61. Lee Brass is a "generator" of hazardous waste as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

62. Used foundry sand that Lee Brass transported from the Foundry #2 storage room sand pile to the SRU's storage silo and processed in Lee Brass's SRU is a D008 hazardous waste as determined pursuant to 40 C.F.R. § 261.24 and ADEM Admin. Code R. 335-14-2-.03(5).

63. Upon information and belief, from at least November 15, 1993, to the present, Lee Brass has thermally processed in its SRU used foundry sand that is an EPA "D008" hazardous waste (characteristic for lead) as identified in 40 C.F.R. § 261.24, Table 1.

64. The thermal processing of used foundry sand that is a D008 hazardous waste in Lee Brass's SRU constitutes "treatment" as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

65. Lee Brass has never obtained a permit or interim status for the operation of its SRU.

66. By processing the used foundry sand, which is a hazardous waste, in its SRU, Lee Brass has treated hazardous waste without a permit or interim status and has violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), the implementing regulations at 40 C.F.R. Parts 264, 265 and 270, Alabama Code § 22-30-12 and the implementing regulations at ADEM Admin. Code R. 335-14-5, 335-15-6 and 335-14-8.

SECOND CLAIM FOR RELIEF

Land Disposal Restriction Violations -- Section 3004(g) of RCRA, 42 U.S.C. § 6924(g) and 40 C.F.R. § 268.40 -- Lead

67. Paragraphs 1 through 56 are re-alleged herein and incorporated herein by reference.

68. By placing treated used foundry sand which exceeds the land disposal restriction standard for lead on the ground at the Brass Foundry "exit pile" from at least November 15, 1993, to approximately April 2000, Lee Brass violated the land disposal restrictions set forth in Section 3004(g) of RCRA, 42 U.S.C. § 6924(g) and 40 C.F.R. Part 268.40.

THIRD CLAIM FOR RELIEF

Storage of hazardous waste without a permit or interim status

69. Paragraphs 1 through 56 are re-alleged herein and incorporated herein by reference.

70. Lee Brass is the “owner” and “operator” of the Brass Foundry as those terms are defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

71. The Brass Foundry, the building in which Foundry #2 is located, the Foundry #2 storage room, and the underlying real property, are each a "facility" as that term is defined by 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

72. Lee Brass is a “generator” of hazardous waste as that term is defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

73. From at least November 15, 1993, to the present, Lee Brass has stored used foundry sand in the Foundry #2 storage room sand pile.

74. The used foundry sand stored in the Foundry #2 storage room sand pile is an EPA “D008” hazardous waste (characteristic for lead) as identified in 40 C.F.R. § 261.24, Table 1.

75. Lee Brass has never obtained a permit or interim status for the storage of hazardous waste in the Foundry #2 storage room.

76. By storing hazardous wastes in the Foundry #2 storage room sand pile without a permit or interim status Lee Brass has violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), the implementing regulations at 40 C.F.R. Parts 264, 265 and 270, 40 C.F.R. § 262.34, Alabama Code § 22-30-12 and the implementing regulations at ADEM Admin. Code R. 335-14-2, 335-15-6 and 335-14-8.

FOURTH CLAIM FOR RELIEF

Preparedness and Prevention 40 C.F.R. §§ 264.31 and 265.31.

77. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

78. The storage of metallic coated old refractory brick that, upon information and belief would fail TCLP analysis, in a concrete bunker, and outdoors on a concrete slab, violates the requirement that Lee Brass maintain its Brass Foundry in a condition that minimizes the release of hazardous waste to the environment and has violated 40 C.F.R. §§ 264.31 and 265.31 and ADEM Admin. Code R. 335-14-5-.03 and 335-14-6-.02(5).

FIFTH CLAIM FOR RELIEF

Failure to Close Satellite Accumulation Drum

79. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

80. By failing on February 4, 1999, to keep closed a 55-gallon drum used to accumulate floor sweepings that are hazardous for lead (D008) in the Brass Foundry's machine shop, Lee Brass violated 40 C.F.R. § 262.34(c)(1)(i) and ADEM Admin. Code R. 335-14-2-.03(5)(c)(i) and 335-14-6-.09(4)(a), which allow the accumulation of as much as 55-gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or without interim status provided that a container holding hazardous wastes is always closed during storage except when it is necessary to add or remove waste.

SIXTH CLAIM FOR RELIEF

Failure to Label Satellite Accumulation Drum

81. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

82. By failing on February 4, 1999, to mark a 55-gallon satellite accumulation drum in the Brass Foundry's machine shop used to accumulate floor sweepings that are hazardous for lead ("D008") with the words "hazardous wastes," Lee Brass violated 40 C.F.R. § 262.34(c)(1)(ii) and ADEM Admin. Code R. 335-14-3-.03(5)(c)(1)(ii), which allows the accumulation of as much as 55-gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the

waste, without a permit or without interim status, provided that the containers are marked “hazardous wastes” or with other words that identify the contents of the containers.

SEVENTH CLAIM FOR RELIEF

Failure to conduct training of employees handling hazardous wastes (40 C.F.R. § 265.16(a)(1))

83. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

84. By failing to conduct an annual review of initial training to perform their duties in a way that ensures Lee Brass’ compliance at its Brass Foundry of the requirements of Alabama’s hazardous waste management program for at least ten of its employees, Lee Brass has violated 40 C.F.R. § 265.16(a)(1) and ADEM Admin. Code R. 335-14-3-.03(5)(a)(4) and 335-14-5-.02(7), which require that facility personnel successfully complete a program of initial classroom training or on the job training that teaches them to perform their duties in a way that ensures that facility’s compliance with hazardous waste management requirements, and undergo annual review of such training.

EIGHTH CLAIM FOR RELIEF

Failure to maintain job titles of employees handling hazardous wastes (40 C.F.R. § 265.16(a)(1))

85. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

86. By failing to maintain a record of the job titles of positions related to hazardous waste management, job descriptions for such positions, and the names of the employees filling such positions, Lee Brass violated 40 C.F.R. § 265.16(d) and ADEM Admin. Code R. 335-14-3-.03(5)(a)(4) and 335-14-5-.02(7)(d), which require the owner or operator maintain documentation of the job title for each position at the facility related to hazardous waste management, the name of the employee filling each job, a written job description for each position listed, including the requisite skill, education, or other qualifications, and duties of employees

assigned to each position, a written description of that type and amount of required; and records that document completed training.

NINTH CLAIM FOR RELIEF

Failure to maintain land disposal restriction
notification form for hazardous waste manifest
in violation of 40 C.F.R. § 268.7(a)(2) and (8).

87. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

88. By failing to include a land disposal restriction notice with one of its hazardous waste manifests, Lee Brass violated 40 C.F.R. § 268.7(a)(2) and ADEM Admin. Code R. 335-14-3-.01(1)(c) and 335-14-9-.01(7), which provide that if a waste does not meet the LDR treatment standard, with the initial shipment of waste to each treatment or storage facility, the generator of that waste must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file.

TENTH CLAIM FOR RELIEF

Failure to maintain adequate
secondary containment in violation of
ADEM Admin Code R. 335-14-3-.03(5)(a)(1)(i)
and 335-14-6-.09(6)(b).

89. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

90. By failing to maintain the cement floor in the hazardous waste storage area free from cracks, Lee Brass violated ADEM Admin. Code R. 335-14-3-.03(5)(a)(1)(i) and 335-14-6-.09(6)(b), which provide that a generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without interim status provided that the containers are stored on a base which is free of cracks, or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

ELEVENTH CLAIM FOR RELIEF

Failure to properly mark waste codes
on hazardous waste containers
(ADEM Admin Code R. 335-14-3-.03(5)(a)(3))

91. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

92. By failing to mark two 55-gallon drums containing floor sweepings that were hazardous waste with the proper hazardous waste codes, Lee Brass violated ADEM Admin. Code R. 335-14-3-.03(5)(a)(3), which provides that a generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without interim status provided that provided that each container holding hazardous waste is marked with the EPA hazardous waste number.

TWELFTH CLAIM FOR RELIEF

Failure to close used oil containers
(ADEM Admin Code R.335-14-17-.03(a)(1)).

93. Paragraphs 1 through 57 are re-alleged herein and incorporated herein by reference.

94. By failing on February 4, 1999, to keep closed one 55-gallon drum used to accumulate used oil in the Brass' Foundry's machine shop and three 55-gallon drums used to accumulate used oil in the Brass' Foundry's used oil storage area, Lee Brass violated ADEM Admin. Code R. 335-14-17-.03 (a)(1), which provides that a container holding used oil must always be closed during storage, except when it is necessary to add or remove waste.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court provide the following relief:

1. A permanent injunction directing defendant Lee Brass to:
 - a. Permanently cease the thermal treatment of the hazardous used foundry sand in the SRU, and close that unit in accordance with the closure and post-closure requirements of RCRA found at 40 C.F.R. Part 265.

- b. Comply with the land disposal restriction requirements and standards set forth in 40 C.F.R. Part 268 regarding the generation, management, and disposal of solid and hazardous wastes at the Lee Brass facility, including the “exit pile;”
 - c. Make appropriate determinations whether the various solid wastes including, D008 lead bearing wastes and waste piles are hazardous wastes, and if so, handle these wastes in accordance with the requirements of RCRA and the authorized state program;
 - d. Maintain and operate the Lee Brass facility in accordance with the requirements of RCRA and Alabama’s hazardous waste management program, including no longer storing hazardous waste for less than ninety days without complying with the less-than-ninety-day storage requirements found in 40 C.F.R. Parts 262 and 265.
- 2. A judgment assessing civil penalties against defendant;
 - 3. A judgment awarding the United States the costs of this action; and
 - 4. Such further relief as this Court may deem appropriate.

Respectfully submitted,

Dated:_____

WALKER B. SMITH
Principal Deputy Chief
Environment and Natural Resources
Division

Dated:_____

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